

NEBRASKA DEPARTMENT
OF INSURANCE

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

MAR 03 2004

FILED

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE,

PETITIONER,

VS.

DARYL C TRAWICK,

RESPONDENT.

CONSENT ORDER

CAUSE NO. A-1525

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Keri M. Schechinger, and Daryl C. Trawick ("Respondent") mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb.Rev.Stat. §44-101.01 and §44-4047 et seq.

2. Respondent is licensed as an insurance producer under the laws of Nebraska at all times material hereto.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Daryl C. Trawick, on January 8, 2004. A copy of the petition was served upon the Respondent at the Respondent's address registered with the Department by certified mail, return receipt requested.

2. The Petition alleges that on or about January 23, 2001, Respondent entered into a Broker and Administration Agreement with Mutual of Omaha Insurance Company

("Mutual of Omaha") in which Respondent, on behalf of Respondent's company, Trawick International, Inc., agreed to:

- a. Comply with the laws of all of the states in which he sold insurance on behalf of Mutual of Omaha, including the laws regarding licensing; and
- b. Act in a fiduciary capacity regarding and to immediately remit all payments received as premiums for the policies Respondent sold on behalf of Mutual of Omaha, without deductions.

3. The Petition also alleges that on or about January 23, 2001, in conjunction with the Broker and Administration Agreement described in paragraph 2, Respondent, on behalf of Respondent's company, Trawick International, Inc., entered into a "Product Compensation Schedule" with Mutual of Omaha in which it was agreed that Mutual of Omaha would pay Trawick International, Inc., a commission of 17.50 percent and an administrative fee of 1.50 percent for both the "College A&S" coverage and the "College Sports" coverage.

4. The Petition further alleges that Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(b), (d), and (h), as a result of the following conduct:

- a. Under the terms of the Brokerage and Administration Agreement, Respondent was required to immediately remit all premiums received by Respondent for Mutual of Omaha policies to Mutual of Omaha.
- b. Between September 4, 2001, and February 28, 2003, Respondent failed to immediately remit all premiums received by Respondent for Mutual of Omaha policies to Mutual of Omaha.
- c. On or about September 4, 2001, Respondent opened a bank account at BankTrust that was designated as "for the benefit of Mutual of Omaha," without the knowledge or authorization of Mutual of Omaha.
- d. Through the execution of a Corporate Authorization Release and a Customer Information Sheet, Respondent set up the account described in paragraph 4.c. so that he and only he had the authority to withdraw funds

from that account. Neither Mutual of Omaha nor any of its officers or employees was authorized to withdraw funds from such account.

- e. Respondent opened the account designated as "for the benefit of Mutual of Omaha," on or about September 4, 2001, with the intent to gain access to the premium funds entrusted to him as payment for policies he sold on behalf of Mutual of Omaha.
- f. Between November 29, 2001, and August 1, 2002, Respondent received approximately one million dollars in premiums for policies he sold on behalf of Mutual of Omaha.
- g. Respondent failed to promptly remit the approximately one million dollars he received as premium payments for policies he sold on behalf of Mutual of Omaha between November 29, 2001, and August 1, 2002.
- h. Between November 29, 2001, and February 28, 2003, Respondent remitted approximately \$568,000 in premiums for policies sold on behalf of Mutual of Omaha to Mutual of Omaha.
- i. Between November 29, 2001, and February 28, 2003, Respondent withdrew and retained approximately \$190,000 for the benefit of himself and his company, Trawick International, Inc., from premiums he had received for policies he had sold on behalf of Mutual of Omaha.
- j. Respondent failed to remit approximately \$199,000 in premiums for policies sold on behalf of Mutual of Omaha to Mutual of Omaha. However, it is expected that such funds will be remitted to Mutual of Omaha sometime in the near future.
- k. Under the terms of the Brokerage and Administration Agreement, Respondent was required to keep funds received on behalf of Mutual of Omaha segregated from other funds handled or received by the Respondent.
- l. On or about September 4, 2001, Respondent opened a bank account at BankTrust that was designated as "for the benefit of Ace Insurance Company," without the authorization of Ace Insurance Company.
- m. Between February 1, 2002, and July 31, 2002, Respondent transferred funds from an account designated as "for the benefit of Mutual of Omaha" into an account designated as "for the benefit of Ace Insurance Company."
- n. Between June 1, 2002, and December 31, 2002, Respondent transferred funds from an account designated as "for the benefit of Mutual of Omaha" into an account designated as "for the benefit of BCS Insurance Company."

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- o. Between August 1, 2002, and December 31, 2002, Respondent transferred funds from an account designated as "for the benefit of Mutual of Omaha" into an account designated as "for the benefit of Combined Insurance Company."

5. The Petition also alleges that Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(b), (d), and (h), as a result of the following conduct:

- a. Between August 1, 2001, and October 31, 2001, Respondent sold insurance in states in which he was not licensed to sell insurance at the time he sold the policies.
- b. The states in which Respondent sold insurance without a license include but are not limited to Colorado, Delaware, Hawaii, Indiana, Kansas, New Jersey, New York, Oregon, Utah, Virginia, and West Virginia.

6. Additional information was provided to the Department subsequent to the filing of the Petition and Notice of Hearing, including:

- a. On or about January 9, 2004, Mutual of Omaha sent a letter to the Department, which read, "Mutual of Omaha Insurance Company, Daryl Trawick and Trawick International, Inc. have resolved their disputes concerning premium monies and have settled the civil lawsuits pending in the state and federal courts in Alabama. The premium monies that were interplead into court have been released to Mutual of Omaha Insurance Company."
- b. On or about February 3, 2004, Respondent provided the Department with a spreadsheet, which he had compiled to provide an accounting of the net premiums that Respondent deemed to be owed to Mutual of Omaha by Respondent prior to the resolution of the dispute discussed in paragraph 6.a. Mutual of Omaha received a copy of such spreadsheet.

7. Respondent was informed of his right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving his right to a public hearing, Respondent also waives his right to confrontation of witnesses, production of evidence, and judicial review.

8. Respondent neither admits nor denies the allegations contained in the Petition and restated in Paragraphs # 2, 3, 4, and 5 above.


CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes a violation of Neb. Rev. Stat. §§ 44-4059(1)(b), (d), and (h).

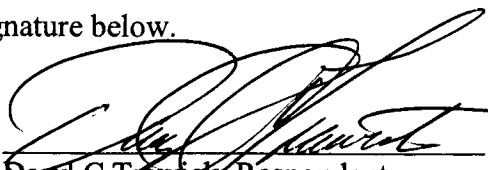
CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent, Daryl C Trawick, that in order to resolve the Petition, the Respondent consents to the suspension of his producer's license for six (6) months from the date the Director signs this Consent Order. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Respondent or the Department to make application for such further orders as may be necessary.

In witness of their intention to be bound by this Consent Order, each party executed this document by subscribing his or her signature below.


Keri M Schechinger
Department of Insurance
941 "O" Street, Suite 400
Lincoln, NE 68508
(402) 471-2201

3/2/04
Date


Daryl C Trawick, Respondent


2-25-04
Date

Attorney for Respondent

Date

State of ~~Nebraska~~ Alabama)
County of ~~Douglas~~ Mobile) ss.

On this 25th day of February, 2004, Daryl C Trawick personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be his voluntary act and deed.

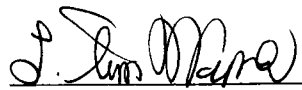


Notary Public
Notary Public State of Alabama at Large
My Commission Expires January 31, 2006

CERTIFICATION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. Daryl C Trawick, Cause No. A-1525.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

3/3/04

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent at Respondent's registered address of 2370 G Hillcrest Rd., PMB 237,

Mobile, AL 36695, by certified mail, return receipt requested on this 4th day of March, 2004.

Tracy A. Gruhn